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December 8, 2004

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Review of the Section 251 Unbundling Obligations of Incumbent Local
Exchange Carriers, CC Docket No. 01-338; Unbundled Access to
Network Elements, WC Docket No. 04-313

Dear Ms. Dortch:

The Promoting Active Competition Everywhere ("PACE") Coalition, through its undersigned counsel, respectfully submits this letter in the above-referenced proceedings demonstrating that (a) a national finding of non-impairment for unbundled local switching contradicts the incumbent local exchange carriers' ("ILECs") own analyses performed in state-level proceedings, and (b) the findings of a recent study conducted by the National Telecommunications and Information Administration (NTIA) confirms that VOIP-based offerings cannot address the same customer segments addressed by unbundled local switching today.

Under the *Triennial Review Order* ("TRO"), state commissions were charged with evaluating claims of non-impairment offered by ILECs. ILECs could claim non-impairment for local switching either by applying triggers that considered actual competition, or by conducting a potential deployment analysis "...to determine whether the market in question is suitable for 'multiple, competitive supply.'"¹ BellSouth conducted such a potential deployment analysis for each of the states in its region which showed -- even accepting BellSouth's definition of the market, expected revenues and costs -- that a statewide finding on non-impairment could not be

¹ TRO, ¶ 506.

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justified in any of those states.² Thus, the ILEC's own analysis demonstrated no rational basis for a *national* finding of non-impairment.

BellSouth's state testimony proposed market areas based on the Bureau of Economic Analysis' Component Economic Areas, further divided by UNE rate zone. BellSouth conducted an analysis to determine which of these markets were suitable for multiple, competitive supply (at least based on BellSouth's inputs, which exaggerated areas of non-impairment). In many areas, even BellSouth's analysis showed the existence of impairment (as summarized below).

State	Number of BellSouth Proposed Markets in State	Number of Markets BellSouth Conceded Impairment
Alabama	34	9
Florida	32	10
Kentucky	20	4
Louisiana	25	13
North Carolina	22	14
South Carolina	16	10
Tennessee	24	17

Importantly, other ILECs never challenged impairment in a number of states.³ Given that the ILECs' own analysis and behavior contradicts any finding of *statewide* non-impairment, no *national* finding of non-impairment can be supported by the record.

Finally, the Commission cannot expect that VoIP-based services will be able to address the same broad market that unbundled local switching does today. The predicate to using a VoIP offering for voice service is that the customer has obtained a broadband connection. However, recent studies conducted by the Small Business Administration ("SBA") and the NTIA demonstrate that broadband access is not used by many small businesses and residential customers. The SBA study indicates that less than 1/2 of small businesses have a high-speed

² We do not endorse BellSouth's potential deployment analysis, for the records in each state demonstrated that BellSouth's analysis overstated revenues and understated costs and, therefore, greatly *exaggerated* areas where competitors were not impaired without access to unbundled local switching. The point is that even accepting all of BellSouth's inputs, even *BellSouth* could not demonstrate non-impairment across each state.

³ Those states include Maine, Montana, New Hampshire, North Dakota, South Dakota and Vermont.

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connection,⁴ while the NTIA analysis offers an even more troubling picture in the residential market.⁵

Penetration of Residential Broadband by Income Category

Broadband Technology	Under \$25K	\$25k to \$50K	\$50K to \$75K	\$75K +
Cable	5.4%	8.8%	14.6%	23.4%
DSL	4.1%	7.0%	10.5%	16.6%
Other	0.4%	0.9%	1.0%	1.3%
Total <i>Addressable</i> VoIP Market	9.9%	16.7%	26.1%	41.3%
Redlined Residential Market	90.1%	83.3%	73.9%	58.7%

The above table confirms an analysis included in the PACE Coalition, et al. comments which showed that only the highest income residential households are potential VoIP customers.⁶ While PACE Coalition members hope to assist in the nation's transformation to a broadband future, the only means to serve small business and residential customers today is through continued access to unbundled local switching.

Respectfully submitted,



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cc: Christopher Libertelli
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⁴ *A Survey of Small Business' Telecommunications Use and Spending*, SBA Office of Advocacy, March 2004, page 44.

⁵ *A Nation Online: Entering the Broadband Age*, NTIA, Sept. 2004, Appendix Tables 2, 4.

⁶ PACE Coalition Comments, p. 18-20. We remind the Commission that the North Carolina Study demonstrated that, unlike the highly skew distribution of broadband, competitors uniformly compete today for households irrespective of income.